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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1578

FLOYD CHANEY, *Petitioner,*

v.

STATE OF FLORIDA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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FLOYD CHANEY, *Petitioner,*

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To: *The Honorable The Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States:*

Your petitioner, FLOYD CHANEY, respectfully prays that a writ of certiorari issue to review the judgment of The Supreme Court of the State of Florida, entered November 30, 1970, and Order denying Petition for Rehearing dated January 14, 1971, affirming an opinion of the District Court of Appeals of the State of

of Florida, Fourth District, filed June 19, 1970, which Opinion affirmed a judgment of conviction in a criminal case.

OPINIONS BELOW

There was no opinion in the Supreme Court of the State of Florida, the Order being a denial of Petition for Certiorari to review the Opinion of the District Court of Appeals, Fourth District of Florida.

The Opinion of the District Court of Appeals, Fourth District of Florida, rendered June 19, 1970, is reported in 237 So. Reporter 2d, at page 281 and is contained in the Appendix to this petition.

JURISDICTION

The jurisdiction of this court is invoked under Title 28, Section 1257, United States Code, and Rule 19 of the Supreme Court of the United States.

The judgment of the Supreme Court of the State of Florida was entered on November 30, 1970, and the Petition for Rehearing was denied January 14, 1971.

QUESTIONS PRESENTED

I

Are rights guaranteed by amendments four and five violated by the search and seizure of items from a subject's vehicle taken as a result of his statements and conduct, elicited pursuant to police questioning while in custody, prior to the subject informed of his Miranda rights?

II

Are items taken by search and seizure as a result of statements and conduct of a subject, in custody, elicited pursuant to police questioning prior to the subject being informed of his Miranda rights, admissible over timely objections based on fourth amendment rights alone?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT

In the Criminal Court of Record in and for Palm Beach County, Florida, the petitioner was convicted of the crimes of Damaging or Injuring Telephone Equipment, Petty Larceny and Possession of Burglary Tools.

Before trial the petitioner filed a Motion to Suppress, wherein petitioner moved the court to suppress all evidence obtained by a search of his automobile, said motion recited that it was based on Federal Constitutional grounds as to the search and seizure (7a). The motion was heard by the trial judge and denied. Timely

objections based on the denial of the Motion to Suppress were made on Fourth Amendment grounds throughout the trial.

The evidence, both upon the hearing of the motion to suppress and upon the trial of the cause, showed the following facts:

On December 3, 1966, at about 5:00 o'clock, P.M., Palm Beach County Deputy Sheriff Walton received a call on his patrol car radio. As he testified, "It was two men in a blue Ford pickup truck that were believed to have burglarized a telephone box on Lantana Road. They were seen heading West on Lantana Road (8a)."

Deputy Walton also received a partial license number and a description of the occupants of the vehicle. Five to seven minutes later he spotted a similar vehicle and occupants, and, although the driver was not committing any traffic violation, he stopped the pickup truck (9a). The Deputy approached the vehicle and asked the driver if he had just made a telephone call. The driver, Floyd Chaney, the petitioner, said, "Yes." (11a). The Deputy then asked if Chaney would lead him back to where he had made the call. Chaney answered, "Yes." (11a). Deputy Walton now accompanied by Deputy Monroe, who had arrived on the scene in another car, followed Chaney some five miles (8a). Deputy Monroe testified that from this point on Chaney would not have been allowed to leave his presence although no formal arrest was made (9a).

Chaney drove directly to where the reported telephone tampering had taken place (11a). Deputy Monroe went to the telephone in question and examined it (12a). Chaney and his passenger got out of

the vehicle. Deputy Walton went over to Chaney's pickup truck, stuck his head in the window with a flashlight, and observed several small lock picks which he testified were not in plain view from outside the vehicle (10a). At this time, as Deputy Monroe, testified, he formally placed Chaney under arrest for "breaking and entering of a telephone" (12a), and advised him of his Constitutional rights. Deputy Monroe further testified that, without requesting permission of Chaney, and without a warrant, he proceeded to search Chaney's vehicle. Numerous items including coins and assorted tools were taken from Chaney's vehicle by Deputy Monroe and other officers now on the scene (10a).

Some of these items were introduced at trial over timely objections and after the defendant's pre-trial Motion to Suppress, which had been denied.

Petitioner, as aforesaid, was convicted of the crimes as charged at trial by jury and sentenced pursuant thereto.

On appeal to the District Court of Appeals, Fourth District of Florida, the judgment and sentence was affirmed (3a) and certiorari to the Supreme Court of the State of Florida was denied (2a).

REASONS FOR ALLOWING THE WRIT

This Court has never decided the question whether or not specific objection based on the Fifth Amendment privilege of self incrimination must be made at trial to exclude physical evidence which is the fruit of custodial interrogation done without the giving of the Miranda warnings, or would a general objection based on the Fourth Amendment's prohibition against un-

reasonable search and seizure suffice to preserve the record for appellate purposes.

This is a question of nationwide appeal and the writ should be allowed because of a definition of the rights of the accused in this area could guide the lower appellate and trial courts of the nation.

The decision of the District Court of Appeals, Fourth District of Florida (3a), and the Order of the Supreme Court of Florida denying certiorari (2a) ignores the inherent federal question which is closely related to the Courts previous ruling of *Miranda* v. *Arizona,* 384 U.S. 436, thereby the Florida Appellate Courts have approved the decision of the trial court which was decided in a way probably not in accord with the *Miranda* and subsequent related decisions of this Court.

ARGUMENT

I

Physical Evidence Obtained by Search and Seizure as the Result of Custodial Interrogation Prior to the Subject Being Advised of His Miranda Rights Is Inadmissible Against the Subject at Trial Under the Fourth and Fifth Amendments.

In *Miranda* this Court held that unless and until certain warnings, followed by a waiver of rights by an accused, are demonstrated by the prosecution at trial no evidence obtained as a result of custodial interrogation can be used against him.

The Petitioner contends that the facts he has set forth in his STATEMENT bring directly within this ruling and the subsequent cases of *Orozco* v. *Texas,* 394 U.S. 324.

In essence, the STATEMENT reveals that a deputy sheriff received a report in which two men and a pick-up truck with a certain tag number were described as being suspects in a telephone burglary which had occurred in the vicinity.

The deputy spotted the described vehicle and suspects several minutes later and pulled the pickup truck over some five miles from the scene of the alleged crime. He approached the vehicle and without saying more asked the driver, the Petitioner Chaney, if he had just made a telephone call. Chaney answered, "Yes", and the deputy asked if he would lead him back to where he had made the call. Chaney complied and led the deputy straight to the scene of the alleged crime. Although not arresting Chaney at this time the deputy later testified that from this point on Chaney was not free to leave. Thus we can infer the custodial stage began.

Shortly after all parties arrived at the scene, Chaney was formally arrested and given the *Miranda* warnings. Without Chaney's consent and without a warrant Chaney's vehicle was searched. Items from the truck were seized and introduced against Chaney at trial after the court had denied a timely motion to suppress these items based on the Fourth Amendment and general Constitutional grounds. The items, the Petitioner submits were obtained as the direct result of the custodial interrogation thus bringing the Fifth Amendment into play in conjunction with the Fourth.

The conduct of the deputy in swiftly apprehending the suspects is not questioned. However, as he was possessed of knowledge of a specific crime and suspect report, he had a duty under *Escobedo* v. *Illinois,* 378

U.S. 478, *Miranda,* and *Orozco* to give the *Miranda* warnings at the moment his suspicions were confirmed: at the time when he mentally matched up the men and vehicle he stopped with the men and the vehicle in his report. But the deputy instead chose to elicit incriminating testimony in the form of the petitioner's verbal responses to the officer's questions, and the petitioner's conduct by his leading the deputy to the scene of the alleged crime at the officer's request when the deputy knew full well the location of the crime scene. At this point the threshold between the investigatory and accusatory stages had been crossed and the deputy was, in effect, gathering evidence to be used against the defendant at trial. In fairness, it should be pointed out that the crime for which the defendant was convicted occurred in 1966 within several months of this Court's rendering the *Miranda* decision and thus possibly before the meaning of the decision was widely understood by police officers.

II

Timely Objections to the Admission of Evidence Obtained by Search and Seizure as the Result of Custodial Interrogation Prior to the Subject Being Advised of His Miranda Rights May Be Based on the Invocation of Fourth Amendment Rights Alone, or, in the Alternative, the Privilege Against Self Incrimination Is So Fundamental That the Absence of Specific Objections Based on the Fifth Amendment Is Unnecessary in These Circumstances.

The decision of affirmation of the Court of Appeals, Fourth District of Florida, as explained in its written opinion, was predicated on the motion that the search was incidental to a legal arrest. That is to say, they found the officer had probable cause to make the arrest. The Appellate Court ignored what had tran-

spired prior to the formal arrest, that is the custodial interrogation phase, which produced the self incrimina-ing conduct which led to the arrest. Addressing itself to this point the Court said that it has "reviewed the other point raised by the defendant and do not consider it to have merit or require discussion (6a)."

Before trial, defense counsel filed a written Motion to Suppress which included as grounds therefor that, "To sustain such search and seizure would be to deprive this defendant of his rights guaranteed to him under the Constitution of the United States and the State of Florida (7a)." Counsel renewed his previously denied motion to suppress at trial through timely objections to the evidence based on search and seizure grounds but never designated the specific Amendment or Amendments upon which he was relying.

The petitioner submits that because the privilege of self incrimination is so intimately related to the prohiibtion against unreasonable searches and seizures in these circumstances that objections to the introduction of evidence on search and seizure grounds alone should be deemed legally sufficient to incorporate self incrimination grounds as well.

There is ample precedent in this Court in the cases of *Leary* v. *United States,* 395 U.S. 6, and *Grosso* v. *United States,* 390 U.S. 62, for the general proposition that the privilege against self incrimination is so fundamental that the failure to assert it at trial will not amount to its waiver for the purposes of appellate review.

Ruling on yet another fact of the self incrimination privilege this Court held in *Blackburn* v. *Alabama* 361 U.S. 799, and *Brown* v. *Mississippi,* 397 U.S. 278, that

where the record revealed a patently involuntary confession the failure of counsel to properly object at trial could be overlooked on appellate review because of the fundamental nature of the error.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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Attorney for Petitioner

APPENDIX

IN THE SUPREME COURT OF FLORIDA

January Term A.D. 1971

Thursday, January 14, A.D. 1971

Case No. 40,140

FLOYD CHANEY, *Petitioner*

v.

STATE OF FLORIDA, *Respondent*

On consideration of the Petition for Rehearing filed by Attorney for Petitioner,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A True Copy,

Test:

SID J. WHITE
Sid J. White
Clerk Supreme Court

IN THE SUPREME COURT OF FLORIDA

July Term, A. D. 1970

Monday, November 30, 1970

Case No. 40,140

FLOYD CHANEY, *Petitioner,*

v.

STATE OF FLORIDA, *Respondent.*

District Court of Appeal, *Fourth* District

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ERVIN, C. J., ROBERTS, DREW, ADKINS and BOYD, JJ, concur.

A True Copy

Test:

SID J. WHITE
Sid J. White
Clerk Supreme Court.

cc: Hon. Evelyn R. Flack, Clerk
Hon. John B. Dunkle, Clerk
Hon. Russell H. McIntosh, Judge
Hon. Frederick W. Daily, III
Hon. Earl Faircloth, Tallahassee
Hon. Earl Faircloth, West Palm Beach

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

January Term, 1970

Case No. 69-215.

FLOYD CHANEY, *Appellant,*

v.

STATE OF FLORIDA, *Appellee.*

Opinion filed June 19, 1970.

Appeal from the Criminal Court of Record for Palm Beach County; Russell H. McIntosh, Judge.

Frederick W. Daily, III, of Ives & Davis, West Palm Beach, for appellant.

Earl Faircloth, Attorney General, Tallahassee, and J. Terrell Williams, Assistant Attorney General, West Palm Beach, for appellee.

REED, J.

The defendant appeals from a conviction in the Criminal Court of Record for Palm Beach County, Florida. The primary issue is whether or not the trial court erred in overruling defendant's pretrial motion to suppress certain tangible objects taken from his vehicle shortly after his arrest.

At the time the defendant was arrested, according to defendant's testimony, the arresting officer told the defendant that he was under arrest for "breaking and entering a telephone". Defendant argues that this was a misdemeanor under Section 822. 10, F.S. 1965, and, since it was not committed in the officer's presence, the arrest with-

out a warrant was invalid. The arrest being invalid, it could not have provided according to defendant a predicate for the incidental search which yielded the objects the defendant sought to suppress.

An arrest without a warrant could be made under Section 901.15(3), F.S. 1965:

> "When [the arresting officer] . . . has reasonable ground to believe that a felony has been . . . committed and reasonable ground to believe that the person to be arrested has committed . . . it."

This statute provides a standard that conforms to the constitutional requirements of the Fourth Amendment to the United States Constitution and Section 22 of the Declaration of Rights of the Florida Constitution of 1885 (now Section 12 of the Declaration of Rights of the Revised Constitution). Whether or not the arresting officer had a reasonable ground to believe that a felony had been committed and that the person to be arrested was the one who had committed the felony is a mixed question of law and fact which must be decided by the court, when this issue is presented in connection with a motion to suppress or by objection to items offered in evidence. The jury plays no part in the resolution of the issue. Urso v. State, Fla. App. 1961, 134 So.2d 810; Brown v. State, Fla. 1950, 46 So.2d 479. Since this issue is exclusively for decision by the trial judge, the judge has the responsibility of weighing the evidence and determining matters of credibility. It follows that his ruling should not be reversed on appeal where supported by competent substantial evidence. Compare Graham v. State, Fla. 1956, 91 So.2d 662, 663, wherein the role of the trial judge in passing on the admissibility of a confession is discussed.

In determining whether or not the arresting officer had a reasonable ground for his arrest, the standard to be employed by the trial judge is the standard of conduct which would have been employed by a reasonable man in the

position of the arresting officer at the time of the arrest acting with the knowledge which at that time was possessed by the arresting officer. State v. Outten, Fla. 1968, 206 So. 2d 392, 397; Henry v. U. S., 1959, 361 U.S. 98, 80 S.Ct. 168, 171, 4 L.Ed.2d 134. If a reasonable man in that position would have concluded that he had reasonable grounds to believe that the defendant had committed a felony, the arrest without a warrant was authorized by Section 901.15 (3), F. S. 1965.

The validity of an arrest does not turn on the label given the arrest by the arresting officer. Even though the arresting officer may have labeled the cause for the arrest a misdemeanor, such will not invalidate an arrest where the facts, when measured by the standard mentioned above, provided reasonable grounds for the arrest without a warrant under the pertinent statute. Bell v. U. S., D.C. Cir. 1957, 254 F.2d 82, 86 (cert. den. 358 U.S. 885, 79 S.Ct. 126, 3 L.Ed. 113); Simms v. State, Mr. App. 1968, 242 A.2d 185, 189; Hoskins v. State, Fla. App. 1968, 208 So.2d 145. Any other rule would be an unjustified preference of form over substance.

It is a well established principle in Florida that an arrest is not complete until it has been communicated to the person to be arrested. The arrest of Chaney, therefore, did not occur until Chaney was returned to the telephone station and the arrest was announced to him by the arresting officers. Chance v. State, Fla. App. 1967, 202 So.2d 825; Lowe v. State, Fla. App. 1966, 191 So.2d 303. At the time of the arrest, the arresting officers had been advised by two purported eye witnesses that the defendant had carried off a coin box from the public telephone which was hanging on a wall outside a store. He had left in a truck. The arresting officers knew from their personal activities that the defendant was apprehended shortly after he had allegedly been seen committing the theft. When the arresting officers returned to the scene of the theft, they personally determined that the coin box was missing from

the telephone and the two purported eye witnesses identified the defendant as one of the men whom they had allegedly seen departing with the coin box. A reasonable man possessed of this knowledge would surely have concluded that the defendant Chaney had removed the coin box from the public telephone and that he was or had been possessed of burglarious tools designed and intended for that purpose. Measured by the reasonable man test, the arrest without a warrant was valid for the felony of possession of burglarious tools. Since the arrest was valid, the incidental search was also valid and the tools discovered in the course of the search were admissible in evidence. The trial court correctly ruled on this point by denying the motion to suppress.

We have reivewed the other point raised by the defendant and do not consider it to have merit or require discussion.

The judgment and sentence appealed from are affirmed.

AFFIRMED.

McCAIN and OWEN, JJ., concur.

IN THE CRIMINAL COURT OF RECORD, IN AND FOR PALM BEACH COUNTY, STATE OF FLORIDA

Case No. 66 C 2750

STATE OF FLORIDA

v.

FLOYD CHANEY, *Defendant.*

Motion To Suppress

Comes now the defendant, FLOYD CHANEY, by his undersigned attorneys, and pursuant to Rule 1.190 (h) (1), Florida Rules of Criminal Procedure, respectfully moves this court to suppress as evidence in this cause all tangible items of property and other evidence seized by the police

from the defendant, his automobile or his premises, and as grounds therefor says:

1. Said search and seizure was made without the benefit of a search warrant.

2. No crime was being committed in the presence of the arresting officer at the time of the search of defendant's person and automobile.

3. Such search of the defendant's person and automobile was not made for the purpose of making effective a lawful arrest in that the arrest was made as a result of the search.

4. To sustain such search and seizure would be to deprive this defendant of his rights guaranteed to him under the Constitution of the United States and of the State of Florida.

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Attorneys for Defendant Chaney

By_____
GARLON A. DAVIS

Testimony of Robert Walton, Deputy Sheriff on Direct Examination at Motion To Suppress Hearing

Beginning page 23, line 19:

A. "I received a call. I think it was about 5:00 o'clock. It was two men in a blue Ford pickup truck that were believed to have burglarized a telephone box on Lantana Road. They were seen heading west on Lantana Road.

Q. Were any numbers given?

A. There was 3GK given with some more numbers. I don't remember them now.

Q. Did you have occasion to run across a vehicle that night?

A. Yes, sir.

Q. Was a description given to you about the oldness and youngness of the man?

A. It stated two white males.

Q. Were the ages given or was one said to be older and the other younger?

A. I don't believe so.

Q. Did you have an occasion to see a blue Ford pickup truck?

A. Yes, sir.

Q. About how long was it after you received the call?

A. Approximately five to seven minutes.

Q. Where did you see this pickup truck?

A. I went out Forest Hill Boulevard. I turned left on State Road 7. That is heading south about a quarter of a mile or so, off of Forest Hill Boulevard.

Q. How far would that be from Lantana Road?

A. A good five miles, maybe more.

Q. Did this license tag on this Ford pickup truck that you saw, did that match the license tag you received over the telephone?

A. Over the radio?

Q. Over the radio.

A. They said it was a 3 GK. A truck fitting that description passed me. I saw two white males in it. It was

a blue Ford pickup truck. I spun around and got behind them. It was 8GK, something.—

Q. Did it—

A. I figure it was a 3 and an 8—something like that.

Q. Did the last four numbers match?

A. They were similar.

Q. Did you have an occasion to stop that car?

A. Yes, sir.

Q. At the time you stopped it, what happened?

A. I approached the vehicle. There were two white males sitting in it. I believe the taller man was driving the truck.

Q. Did you see him in here today?

A. This is the man right here. (indicating).

Q. What happened then?

A. I asked them if they would just come up to Lantana Road, down State Road 7—

Q. They said yes?

A. I asked them if they had stopped to make a a telephone call some place. They said yes. They were calling a girl up in Daytona Beach or somewhere in there.

Q. Did you ask them to go back there?

A. Yes, sir.

Q. At this time and at that point, would you allow them to leave?

A. No, sir.

Q. Did you have an occasion—what did you do when you got back? Did you talk to Joe Fraizer when you got back?

A. I talked to Mr. Fraizer and Willie Lockhart.

Q. Now, at this time, they would not have been allowed to leave, is that correct?

A. No, sir.

Q. What did you do then? Who was with you? Was there another officer?

A. Deputy Sheriff Monroe came up after I stopped the vehicle.

Q. He followed you back to the scene?

A. Yes."

Ending page 26, line 20.

Beginning page 27, line 4:

Q. At this time, had you gone into the truck?

A. No, sir.

Q. Did you have an occasion to see anything on the dashboard before Deputy Sheriff Monroe removed—

A. I believe there was a very few small lock picks.

Q. On the dashboard of the vehicle?

A. Yes, sir.

Q. And could these be seen in plain view from outside the vehicle?

A. No, I think you had to look into the window like this (indicating).

Ending page 27, line 14.

Beginning page 34, line 3:

Q. What time do you claim you placed him under arrest?

A. I placed him under arrest at the labor camp, at about thirty minutes or so after the original stopping on State Road 7.

Ending page 34, line 6.

Testimony of Joel Monroe, Deputy Sheriff on Direct Examination at Trial

Beginning page 76, line 15:

Q. Did you have an occasion to stop a Ford pick-up truck along with Deputy Sheriff Walton or at least come up on him after he was stopped?

A. I came up after the truck was stopped.

Q. Would you tell the members of the Jury exactly what you observed at the time you came up?

A. At the time I arrived at the pick-up truck, the subject later identified as Mr. Chaney was walking back towards the pick-up truck to meet Deputy Sheriff Walton.

Q. Do you see Mr. Chaney in the Courtroom?

A. Yes, this gentlemen here, (indicating).

Q. Describe the color tie he is wearing?

A. A metallic blue.

Q. What time was it when you saw Mr. Chaney get out?

A. Shortly after 5:00 o'clock in the afternoon.

Q. It was still light out?

A. Yes, it was.

Q. What occurred then?

A. I approached Mr. Chaney and asked him what was the trouble at the telephone booth. I didn't mention what telephone booth. He said he was trying to call his sister somewhere in Daytona, I believe it was. I asked Mr. Chaney if he would go back to the telephone booth and straighten the problem out. At this time he got back in his truck and turned the truck around and headed south. I followed him.

Q. You didn't tell him which telephone?

A. No, I didn't.

A. He went to a Labor Camp on Lantana Road, the Lee Brother's Camp.

Q. The Lee Brother's Camp?

A. Yes.

Q. What happened at the Lee Brother's Camp?

A. At the Lee Brother's Camp we received a message that a telephone booth there had been entered. And that these particular men were suspect in this Breaking and Entering. And so when I got to the Labor Camp I found three subjects that said they saw these men at the telephone booth. I then tried to get hold of a telephone man to check the booth to see if it had been entered. And I later took a probe, a match stick and pushed it up the drain hole of the telephone box and found that the money box was missing.

Q. Where is the money box located?

A. It is located at the base of the telephone.

Q. Were you instructed by someone on what to do?

A. Yes, after we contacted the office, one of the security agents there—

Q. What did you discover when you did this? Was the money box in there or wasn't it?

A. The money box was missing.

Q. Was the door on the money box, on the front of the telephone, was that a locked door?

A. Yes, the telephone was intact completely with the door in front.

Q. After you discovered the money box missing, what did you do?

A. I placed the subjects under arrest for Breaking and Entering of the telephone booth.

Ending page 79, line 1.